Azri bin Amin v Ketua Pegawai Eksekutif Majlis Agama Islam dan Adat Melayu Perak & Anor

HIGH COURT (TAIPING) — ORIGINATING SUMMONS NO AB-24NCvC-173–09 OF 2022
NOOR RUWENA JC
19 SEPTEMBER 2023

Civil Procedure — Striking out — Originating summons — Plaintiff filed originating summons seeking declaration that his conversion to Islam was null and void — Respondents applied to strike out originating summons — Whether there was reasonable cause of action by applicant against respondents — Whether action was abuse of court process — Whether court had jurisdiction to try matter — Rules of Court 2012 O 18 r 19

The plaintiff ('applicant') filed an originating summons ('OS') to seek, inter alia, declarations that: (a) he was an individual professing and practicing Hinduism, not Islam; (b) that his conversion to Islam when he was eight years old was null and void; and (c) that his name was Lingges a/l Pannir Chelvan, not Azri bin Amin. The conversion to Islam was made under s 98 of the Enakmen Pentadbiran Agama Islam (Perak) 1992. The marriage of the applicant's parents was registered under the Law Reform (Marriage and Divorce) Act 1976. The applicant, the third child of his parents, claimed that he was raised as a Hindu all his life and often went to pray at the temple with his parents and celebrated all their religious festivals. When the applicant was eight years old, his parents brought him and his siblings to Pejabat Agama Islam Daerah Taiping where all of them converted to Islam. He claimed that he did not pronounce the Shahadah ie proclamation of faith in Islam and neither would he know the meaning of it. Despite that, he was issued a copy of a certificate of conversion, Sijil Pemelukan Islam. The applicant and his family denied practicing Islam after the conversion and it was alleged that their parents regretted converting to Islam. Therefore, the children were brought up as devout Hindus and had never practiced the system of beliefs or doctrines of Islam. The second respondent filed a notice of application under O 18 r 19 of the Rules of Court 2012 ('the ROC') to strike out the OS on the grounds that there was no reasonable cause of action in the OS and that it was an abuse of the court process. The first respondent then filed a similar notice of application to seek a declaration that the court did not have jurisdiction in regard to the first respondent and neither did it have jurisdiction pertaining to the reliefs and remedies sought by the applicant in accordance with O 12 r 10 of the ROC. The reasons for the application were that the OS should not have been filed in the civil courts and the OS was an abuse of the court process.

Held, allowing applications to strike out the OS with costs:

(1) The court ceased to have jurisdiction to hear the matter as the reliefs sought fell squarely within the jurisdiction of the Syariah Court under art 121(1A) of the Federal Constitution ('the FC'). Moreover, there were contradictory evidence in regard to the assertion that they were non-Muslims. There was a statutory declaration signed by his mother in support of the application to Jabatan Pendaftaran Negara to amend his name from Lingges a/l Pannir Chelvan to his Muslim name Azri bin Amin. The photographs to show that they as a family celebrated Hindu festivals did not depict their purported practice of Hinduism within the few years after they claimed to have renounced Islam. There were also no childhood photographs of the applicant showing his lifestyle or practicing Hinduism. Since the parents were taught the ways of Islam by the missionary, the family, at some point in time had practiced Islam but reverted to Hinduism as opposed to the version that was stated by the applicant that the parents reverted to Hinduism almost immediately. There was also evidence in the forms regarding the conversion that the parents' consent were obtained, and this did not run counter to the provision under art 12(4) of the FC. The applicant should have pursued the case in the Syariah Court to determine the status of his conversion rather than in the civil courts. Pursuant thereto, the court could not find in favour of the applicant that the evidence adduced would support his contention that this was not a proper case to be struck out for want of a reasonable cause of action and/or an abuse of the court process. The court did not have the jurisdiction to hear the matter as it fell squarely within the jurisdiction of the Syariah Court to determine the validity of the conversion first (see paras 39, 42–44 & 46).

[Bahasa Malaysia summary

Plaintif ('pemohon') memfailkan saman pemula ('OS') untuk memohon, antara lain, pengisytiharan bahawa: (a) dia adalah seorang individu yang menganut dan mengamalkan agama Hindu, bukan Islam; (b) bahawa pemelukan Islam ketika berumur lapan tahun adalah batal dan tidak sah; dan (c) bahawa namanya ialah Lingges a/l Pannir Chelvan, bukan Azri bin Amin. Pemelukan Islam dibuat di bawah s 98 Enakmen Pentadbiran Agama Islam (Perak) 1992. Perkahwinan ibu bapa pemohon telah didaftarkan di bawah Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976. Pemohon, anak ketiga ibu bapanya, mendakwa dia dibesarkan sebagai seorang Hindu sepanjang hayatnya dan sering pergi bersembahyang di kuil bersama ibu bapanya dan menyambut semua perayaan agama mereka. Ketika pemohon berusia lapan tahun, ibu bapanya membawa dia dan adik-beradiknya ke Pejabat Agama Islam Daerah Taiping di mana kesemua mereka memeluk agama Islam. Dia mendakwa bahawa dia tidak melafazkan Shahadah iaitu pengisytiharan iman dalam Islam dan dia juga tidak mengetahui maksudnya.

Sungguhpun begitu, dia telah diberikan salinan sijil pemelukan, Sijil Pemelukan Islam. Pemohon dan keluarganya menafikan mengamalkan Islam selepas memeluk Islam dan didakwa ibu bapa mereka menyesal memeluk Islam. Oleh itu, anak-anak dibesarkan sebagai penganut Hindu yang taat dan tidak pernah mengamalkan sistem kepercayaan atau ajaran Islam. Responden kedua memfailkan notis permohonan di bawah A 18 k 19 Kaedah-Kaedah Mahkamah 2012 ('KKM') untuk membatalkan OS atas alasan bahawa tiada kausa tindakan yang munasabah dalam OS dan bahawa ia adalah penyalahgunaan proses mahkamah. Responden pertama kemudiannya memfailkan notis permohonan yang sama untuk mendapatkan pengisytiharan bahawa mahkamah tidak mempunyai bidang kuasa berhubung dengan responden pertama dan juga tidak mempunyai bidang kuasa berkaitan relif dan remedi yang dipohon oleh pemohon mengikut A 12 k 10 KKM. Sebab untuk permohonan itu adalah bahawa OS tidak sepatutnya difailkan di mahkamah sivil dan OS adalah penyalahgunaan proses mahkamah.

Diputuskan, membenarkan permohonan pembatalan OS dengan kos:

(1) Mahkamah tidak lagi mempunyai bidang kuasa untuk mendengar perkara tersebut kerana relif yang dipohon jatuh dalam bidang kuasa Mahkamah Syariah di bawah perkara 121(1A) Perlembagaan Persekutuan ('PP'). Selain itu, terdapat keterangan yang bercanggah berhubung dengan dakwaan bahawa mereka bukan Islam. Terdapat akuan berkanun yang ditandatangani oleh ibunya bagi menyokong permohonan kepada Jabatan Pendaftaran Negara untuk meminda namanya daripada Lingges a/l Pannir Chelvan kepada nama Islamnya Azri bin Amin. Gambar-gambar yang menunjukkan bahawa mereka sekeluarga merayakan perayaan Hindu tidak menggambarkan amalan mereka yang kononnya beragama Hindu dalam tempoh beberapa tahun selepas mereka mendakwa telah meninggalkan Islam. Juga tiada gambar kanak-kanak pemohon yang menunjukkan gaya hidupnya atau mengamalkan agama Hindu. Memandangkan ibu bapa diajar cara-cara Islam oleh mubaligh, keluarga tersebut, pada satu ketika dahulu telah mengamalkan Islam tetapi kembali kepada Hindu berbanding versi yang dinyatakan oleh pemohon bahawa ibu bapa kembali kepada Hindu dengan serta-merta. Terdapat juga keterangan dalam borang berkenaan pemelukan bahawa kebenaran ibu bapa telah diperolehi, dan ini tidak bertentangan dengan peruntukan di bawah perkara 12(4) PP. Pemohon sepatutnya meneruskan kes di Mahkamah Syariah untuk menentukan status penukaran agamanya dan bukannya di mahkamah sivil. Selaras dengan itu, mahkamah tidak dapat memihak kepada pemohon bahawa keterangan yang dikemukakan akan menyokong hujahnya bahawa ini bukan kes yang wajar untuk dibatalkan kerana tidak mempunyai kausa tindakan yang munasabah dan/atau penyalahgunaan proses mahkamah. Mahkamah tidak mempunyai bidang kuasa untuk mendengar perkara

itu kerana ia berada dalam bidang kuasa Mahkamah Syariah untuk menentukan kesahihan penukaran agama terlebih dahulu (lihat perenggan 39, 42–44 & 46).]

Cases referred to

Azmi bin Mohamad Azam @ Roneey v Director of Jabatan Agama Islam Sarawak & Ors [2016] MLJU 1558; [2016] 6 CLJ 562, HC (distd)

Balasupramaniyam a/l R Letchumanan lwn Datuk Nallakaruppan a/l Solaimalai [2013] 8 MLJ 505, HC (refd)

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36; [1993] 4 CLJ 7, SC (refd)

Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor [1992] 1 MLJ 1; [1991] 3 CLJ 2768; [1991] 1 CLJ Rep 77, SC (refd)

Hj Raimi bin Abdullah v Siti Hasnah Vangarama bt Abdullah and another appeal [2014] 3 MLJ 757; [2014] 4 CLJ 253, FC (folld)

Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545; [2018] 2 MLRA 1, FC (refd)

Kaliammal a/p Sinnasamy v Majlis Agama Islam Wilayah Persekutuan (JAWI) & Ors [2012] 3 MLJ 694; [2011] 2 CLJ 165, CA (refd)

Ketua Pegawai Penguatkuasa Agama & Ors v Maqsood Ahmad & Ors and another appeal [2021] 1 MLJ 120; [2020] 10 CLJ 748, CA (refd)

Letang v Cooper [1965] 1 QB 232, CA (refd)

Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan dan lain-lain [2007] 4 MLJ 585; [2007] 3 CLJ 557, FC (refd)

Majlis Agama Islam Selangor v Dahlia Dhaima bt Abdullah and another appeal [2023] 2 MLJ 897; [2023] 2 CLJ 513, CA (refd)

New Straits Times (Malaysia) Bhd v Kumpulan Kertas Niaga Sdn Bhd & Anor [1985] 1 MLJ 226, FC (refd)

Ng Hee Thoong & Anor v Public Bank Bhd [1995] 1 MLJ 281; [1995] 1 CLJ 609, CA (refd)

Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor [2021] 2 MLJ 181; [2021] 3 CLJ 301, FC (refd)

Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor [1999] 1 MLJ 489; [1999] 2 CLJ 5, FC (refd)

Tan Kim Hor & Ors v Tan Heng Chew & Ors [2003] 1 MLJ 492, CA (folld)

Wenlock v Moloney and others [1965] 1 WLR 1238; [1965] 2 All ER 871, CA (refd)

Legislation referred to

Enakmen Mahkamah Syariah (Perak) 2018 s 17(2)(b), (2)(b)(xiv)

Enakmen Pentadbiran Agama Islam 1992 (repealed by Enakmen Pentadbiran Agama Islam Perak 2004) ss 98, 102

Enakmen Pentadbiran Agama Islam Perak 2004 ss 5(1), (2), 50(3)(b)(x), 96, 97

Federal Constitution arts 3, 5, 9, 10, 11, 11(1), 12, 12(3), (4), 13,

121, 121(1A)
Law Reform (Marriage and Divorce) Act 1976
Rules of Court 2012 O 12 r 10, O 18 r 19, O 18 r 19(1)(a), (1)(b), (1)(d), O 28 r 8(1)

Rajesh Nagarajan (with Lusinthra Pillai) (Raj & Sach) for the applicant.
Norazali bin Nordin (Maxwell, Kenion, Cowdy & Jones) for the first respondent.
Siti Nora bt Shariff (Perak State Legal Advisor's Office) for the second respondent.

Noor Ruwena JC:

[1] This court decided on 18 April 2023 to allow the applications made in encl 7 by the first respondent and encl 3 by the second respondent in this originating summons ('the OS') to strike out the OS filed by the plaintiff ('the applicant') with costs. The applicant did not appeal against the court's decision. Nevertheless, herein the grounds of judgment are the reasons for striking out the OS.

BACKGROUND

[2] The prayers in the OS (encl 1) sought for the following orders from the court:

(i) Suatu Deklarasi bahawa Pemohon merupakan seorang individu yang mengakui dan mengamal agama Hindu dan bukan agama Islam;

(ii) Suatu Deklarasi bahawa pengislaman Pemohon adalah tidak sah dan terbatal;

(iii) Suatu Deklarasi bahawa nama Pemohon adalah 'Lingges a/l Pannir Chelvan' dan bukannya 'Azri bin Amin';

(iv) Kos tindakan ini; dan

(v) Lain-lain relif yang difikirkan patut dan suaimanfaat oleh Mahkamah Yang Mulia ini.

Alasan-alasan yang menyokong Saman Pemula ini adalah seperti yang berikut:

1. Pemohon menafikan sama sekali bahawa Pemohon memahami dan mengucapkan Dua Kalimah Syahadah dan bahawa Pemohon telah memeluk agama Islam dengan rela hati.

2. Pemohon telah dianggap memeluk agama Islam selaras dengan s 98 EPAI 1992 kerana Pemohon merupakan seorang kanak-kanak pada 15.08.2002.

3. Pemohon juga menafikan bahawa Pemohon mengaku tiada Tuhan yang disembah melainkan Allah dan mengaku Nabi Muhammad Pesuruh Allah.

4. Pemohon menyatakan bahawa Pemohon merupakan seorang penganut agama Hindu yang kuat dan tidak pernah mengamalkan sistem kepercayaan-kepercayaan atau doktrin-doktrin agama Islam.

5. Didikan Pemohon di rumah telah dijalankan atas dasar bahawa Pemohon adalah penganut agama Hindu. Pemohon mengakui agama Hindu sebagai agama Pemohon.

6. Pemohon tidak boleh, dan tidak akan, dalam apa jua keadaan sekalipun menarik balik atau meninggalkan kepercayaan agama Hindu mereka atau memeluk mana-mana agama.

7. Pemohon bersandar kepada hak Pemohon untuk mengamali dan mempraktikkan agama Hindu merupakan hak perlembagaan dibawah Artikel 11 Perlembagaan Persekutuan yang juga merupakan satu hak asasi manusia seperti yang dinyatakan dalam Perisytiharan Sejagat Hak Asasi Manusia 1948 oleh Pertubuhan Bangsa-Bangsa Bersatu dan pelbagai instrumen hak asasi manusia yang lain.

8. Pada setiap masa material, Pemohon tidak pernah menganut dan mengamalkan agama Islam:

   (a) Pemohon tidak pernah sembahyang menurut agama lslam atau pergi ke masjid;

   (b) Pemohon tidak pernah sunat;

   (c) Pemohon tidak pernah menyambut apa-apa perayaan Muslim dan menerima pakai apa-apa kepercayaan agama Islam. Ini termasuk makan atau minum makanan dan minuman halal dan berpuasa; dan

   (d) Sebaliknya, Pemohon biasanya menjadi vegetarian sebelum perayaan agama Hindu seperti sebulan sebelum Thaipusam.

[3] On 5 December 2022, the second respondent filed a notice of application under O 18 r 19 of the Rules of Court 2012 ('the ROC') in encl 3 to strike out the OS on the grounds that there was no reasonable cause of action in the OS and that it was an abuse of the court process under O 18 r 19(1)(a) and (d). The first respondent then filed a similar notice of application in encl 7 on 29 December 2022 to seek a declaration that the court did not have jurisdiction in regard to the first respondent and neither did it have jurisdiction pertaining to the reliefs and remedies sought by the applicant in accordance with O 12 r 10. The first respondent's application to strike out the OS under O 18 r 19 was made on the premise of grounds (a), (b) and/or (d). The reasons for the application in encl 7 was that the OS should not have been filed in the civil courts and the OS was an abuse of the court process. Moreover, the plaintiff did not have a cause of action against the first respondent.

[4] The issues to be decided by the court are collectively then:

(a) whether there was a reasonable cause of action by the applicant against the respondents;

(b) whether the action was frivolous, scandalous or vexatious;

(c) whether the action was an abuse of the court process;

(d) whether the civil courts have jurisdiction to try the matter because this was directly in relation to grounds (a) and (d) of O 18 r 19; and

(e) whether the civil courts did not have jurisdiction in regard to the first respondent.

THE APPLICABLE LAW

[5] Citing arts 11, 12 and/or 121 of the Federal Constitution, essentially the declarations sought by the applicant were that: (i) he was an individual professing and practicing Hinduism, not Islam; (ii) that his conversion to Islam when he was eight years old was null and void; and (iii) that his name was Lingges a/l Pannir Chelvan', not 'Azri Bin Amin'. The conversion to Islam was made under s 98 of the Enakmen Pentadbiran Agama Islam 1992 ('the EPAI') Negeri Perak. The enactment has been repealed and replaced by EPAI 2004.

FACTUAL MATRIX

[6] The relevant enclosures in this application were as follows:

(a) originating summons dated 30 September 2023 (encl 1);

(b) affidavit in support affirmed by Azri bin Amin on 6 September 2022 (encl 2);

(c) notice of application by the second respondent dated 5 December 2022 (encl 3);

(d) affidavit in support affirmed by Siti Nora bt Sharif on 5 December 2022 (encl 4);

(e) notice of application by the first respondent dated 29 December 2022 (encl 7);

(f) affidavit in support affirmed by Shahrul Azam bin Shaari on 27 December 2022 (encl 8);

(g) affidavit in opposition by the first respondent affirmed by Shahrul Azam bin Shaari on 27 December 2022 (encl 9);

(h) affidavit in reply by the applicant (in response to encl 4) affirmed by Azri bin Amin on 28 December 2022 (encl 10);

(i) affidavit in reply by the applicant (in response to encl 9) affirmed by Azri bin Amin on 18 January 2023 (encl 11);

(j) affidavit in reply by the applicant (in response to encl 8) affirmed by Azri bin Amin on 18 January 2023 (encl 12);

(k) additional affidavit affirmed by Amin bin Abdullah on 13 February 2023 (encl 13);

(l) additional affidavit affirmed by Azimah bt Abdullah on 13 February 2023 (encl 14); and

(m) affidavit in opposition (II) of the first respondent affirmed by Siti Khadizah @ Jitenih bt Ulasim on 24 February 2023 (encl 15).

[7] The facts of the case were gathered from the abovementioned affidavits. The marriage of the applicant's parents on 16 September 1989 was registered under the Law Reform (Marriage and Divorce) Act 1976 ('the 1976 Act'). The applicant was the third child of his parents and was born on 21 January 1994. He claimed he was raised as a Hindu all his life and often went to pray at the temple with his parents and celebrated all their religious festivals such as Navaraathri, Deepavali and Thaipusam. On 15 August 2002, the applicant's parents brought him and his siblings to Pejabat Agama islam Daerah Taiping where all of them converted to Islam. As an eight-year old, the applicant merely followed his parents and could not know or understand what transpired at the material time. He claimed that he did not pronounce the *Shahadah* ie proclamation of faith in Islam and neither would he know the meaning of the *Shahadah.* Despite that, he was issued a copy of a certificate of conversion, *Sijil Pemelukan Islam*, dated 25 September 2002 ('Kad Pengislaman'). His parents' Muslim name was Amin bin Abdullah and Azimah bt Abdullah, respectively, whereas his two elder brothers were named Azmi and Azin pursuant to the conversion.

[8] The applicant and his family denied practising Islam after the conversion and it was alleged that their parents regretted converting to Islam and thereby caused their children to also leave Hinduism. Therefore, the children were brought up as devout Hindus and had never practiced the system of beliefs or doctrines of Islam. Hence, he stated that he was not subject to the relevant Islamic laws. Throughout his life, when called upon to make an oral declaration of religion of confession, the applicant always answered 'Hinduism' and that among friends, he was known as a Hindu.

[9] The applicant averred that based on his understanding and appreciation of Hinduism, he truly had faith in the beliefs and doctrines of Hinduism, and regarded Hinduism as the only path to spiritual well-being, peace of mind and personal happiness. He intended to maintain his faith and beliefs in Hinduism,

and to continue to acknowledge and practice Hinduism. He stated that he cannot, and will not, under any circumstances retract or abandon Hindu religious beliefs or embrace any other religion or adopt any other belief system or doctrines. The applicant claimed to uphold his right to practice Hinduism as guaranteed under art 11 of the Federal Constitution as well as his human rights in the 1948 United Nations Universal Declaration of Human Rights and other human rights instruments.

[10] To emphasise on his claim, the applicant alleged that he:

(a) had never prayed or worshipped in accordance to Islam or went to the mosque;

(b) had never been circumcised;

(c) had never never celebrated any Muslim festivals and adopted any islamic religious beliefs, including eating or drinking halal food and drink and fasting; and

(d) had become a vegetarian prior to Hindu religious festivals, such as a month prior to Thaipusam.

[11] Notwithstanding the foregoing, the respondents and their advocates wrongfully regarded him as a 'Muslim' (by force of law) or a person who practiced the religion of Islam and was subject to Syariah Law passed by the State Assembly. However, he claimed that the Syariah Law passed by the State Assembly had no effect on and should not be applied to him as he never embraced and/or practiced Islam. Pursuant thereto, the applicant averred that his registration as a Muslim individual was incorrect. This interpretation would be detrimental to and affected his rights, privileges and interests as an individual who practiced Hinduism. For instance, he could be investigated, detained or arrested by the Perak Chief Islamic Religious Enforcement Officer, prosecuted by the Perak Chief Syariah Prosecutor and convicted by Syariah courts for offenses under Islamic Law passed by the State Assembly that did not apply to non-Muslims.

[12] As a result of this, the applicant stated that he was still unmarried and cannot have legitimate children. He also stated that when he dies, he does not want his remains to be taken by the defendants' officers for burial in accordance to Islamic funeral rites, thus not respecting his wish to follow Hindu religious funeral rites. Hence, he also could not bequeath or dispose by will, any and all property in his possession, in the event/at the time, of his death. Further, his access to receive fundamental texts of Hinduism, books, magazines, pamphlets, sound recordings or films on the Hindu religion, statues of Hindu

deities and any speech, statement, or display on the Hindu religion, from other Hindus (including religious leaders), or non-Muslims in general, was restricted.

[13] The applicant then came across a newspaper cutting about the case of *Azmi bin Mohamad Azam @ Roneey v Director of Jabatan Agama Islam Sarawak & Ors* [2016] MLJU 1558; [2016] 6 CLJ 562 ('Azmi') and he decided to seek the same remedy from the civil courts.

EVALUATION AND FINDINGS OF THE COURT

[14] It is pertinent to set out the four grounds to strike out a pleading as provided for under O 18 r 19 of the ROC which states:

> 19(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any writ in the action, or anything in any pleading or in the endorsement, on the ground that —
>
> (a) it discloses no reasonable cause of action or defence, as the case may be;
>
> (b) it is scandalous, frivolous or vexatious;
>
> (c) it may prejudice, embarrass or delay the fair trial of the action; or
>
> (d) it is otherwise an abuse of the process of the Court,
>
> and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

[15] An application under limb (a) requires a perusal of the pleadings to ascertain if it discloses a cause of action. A reasonable cause of action simply means a factual situation the existence of which entitles one person to obtain from the court a remedy against another person: *Letang v Cooper* [1965] 1 QB 232. The test to be applied is whether on the face of the pleading, the court is prepared to say that the cause of action or the defence is obviously unsustainable: *New Straits Times (Malaysia) Bhd v Kumpulan Kertas Niaga Sdn Bhd & Anor* [1985] 1 MLJ 226; *Balasupramaniyam a/l R Letchumanan lwn Datuk Nallakaruppan a/l Solaimalai* [2013] 8 MLJ 505. In the oflen-cited case of *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36; [1993] 4 CLJ 7 the Supreme Court held that the courts can only strike out *if it is plain and obvious that there is no case,* that recourse can be had to an O 18 r 19. The summary procedure can only be adopted when it can be clearly seen that a claim or answer is prima facie obviously unsustainable. Moreover, it cannot be exercised by a minute examination of the documents and facts of the case in order to see whether the party has a cause of action or defence (see *Wenlock v Moloney and others* [1965] 1 WLR 1238; [1965] 2 All ER 871).

[16] The second respondent submitted that the OS filed by the applicant did not reveal any reasonable cause of action against it and this was because it was clearly against the applicable laws herein, which was the Syariah laws. The relief he was seeking should have been sought in the Syariah court because it clearly fell under s 17(2)(b)(xiv) of the Enakmen Mahkamah Syariah (Perak) 2018 where the said court has the competence and jurisdiction in respect of a declaration that a person was no longer a Muslim.

[17] The Second respondent submitted that application of art 121(1A) of the Federal Constitution could be seen in the case of *Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor* [1992] 1 MLJ 1; [1991] 3 CLJ 2768; [1991] 1 CLJ Rep 77 which ruled that the question of whether a person was a Muslim or had renounced the religion before his death was to be properly determined in the forum of the Syariah Court. In *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489; [1999] 2 CLJ 5 the Federal Court stated that the jurisdiction of the Syariah Court to deal with conversion out of Islam, though not expressly mentioned in the relevant State Enactment, could be read into the same by necessary implication as derived from the provisions therein on conversion into Islam. In the case of *Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan dan lain-lain* [2007] 4 MLJ 585; [2007] 3 CLJ 557 the Federal Court ruled that apostasy out of Islam was concerned with Islamic law which fell within the jurisdiction of Syariah Courts, thus to the exclusion of the Civil Courts under art 121(1A). Later, in *Kaliammal a/p Sinnasamy v Majlis Agama Islam Wilayah Persekutuan (JAWI) & Ors* [2012] 3 MLJ 694; [2011] 2 CLJ 165 the Court of Appeal held that determination of the question as to whether a person is a Muslim or otherwise is, under art 121(1A), the sole jurisdiction of the Syariah Court. Then in *Hj Raimi bin Abdullah v Siti Hasnah Vangarama bt Abdullah and another appeal* [2014] 3 MLJ 757; [2014] 4 CLJ 253 the Federal Court observed that it would be highly inappropriate for the Civil Courts to adjudicate on the validity of conversion of any person into Islam since this was construed as a religious issue which pursuant to art 121(1A) meant the Civil Courts had no jurisdiction as it would be a matter strictly within the exclusive jurisdiction of the Syariah Court.

[18] Most recently in *Majlis Agama Islam Selangor v Dahlia Dhaima bt Abdullah and another appeal* [2023] 2 MLJ 897; [2023] 2 CLJ 513, the majority decision of the Court of Appeal held:

> (1) In cases where the Syariah Court had already made the determination that an applicant is a Muslim, like in the instant case, the distinction drawn in *Rosliza* must necessarily be construed and answered as a renunciation case. It was irrelevant whether the application filed at the Syariah Court was stated as one never was a Muslim or ono no iongor was a Muslim, procisoly bocauso tho judicial determination had already been made by the Syariah Court in that one was a Muslim or was still a Muslim. The civil court clearly had no power of judicial review

A over the Syariah Court — let alone reverse, depart or in any manner re litigate or unravel or go behind the decision of the Syariah Court — as this would be tantamount to an infringement of art 121(1A) of the Federal Constitution ('FC') ...

B **[19]** Meanwhile, the first respondent submitted that at the material time, the applicant was a person who had converted to Islam and this fact was based on the documents which he himself exhibited in his affidavits in support of the OS. These were in the documents:

C (a) an application dated 25 February 2013 filed by the applicant and his eldest brother, Azmi, at Mahkamah Tinggi Syariah Perak in Parit Buntar for 'Perisytiharan bahawa Pemohon-pemohon bukan iagi seorang yang beragama Islam menurut s 50(3)(b)(x) Enakmen Pentadbiran Agama Islam Perak 2004' (refer to exh SK3 of encl 15); and

D (b) *Sijil Pemelukan Agama Islam* bearing reference number 262/2002/TPG (refer to exh AA3 of encl 2).

[20] It was the first respondent's contention that the applicant was to proceed with the application filed under the then s 50(3)(b)(x) Enakmen E Pentadbiran Agama Islam Perak 2004 or the current Enakmen Syariah (which was not proceeded upon then). The first respondent submitted that the applicant's OS was bound to fail as it was plain and obvious that his case fell under the purview of the Syariah Courts and not the civil courts as provided for under s 17(2)(b) of the Enakmen Mahkamah Syariah (Perak) 2018 read with F art 121(1A) of the Federal Constitution. The exh SK3 was filed by his previous counsel Tetuan Mohammad Ash Abas & Co, at the Mahkamah Syariah in Parit Buntar Case No 08300043–0029–2017 (refer to pp 19–20 of encl 15). The affidavit in support of the application clearly stated that he and his brother were no longer a Muslim. Hence, it was submitted also that the OS was clearly an G abuse of the court process.

[21] In regard to the conversion certificate, it was issued under the provision of s 102 of the EPAI 1992 (Enactment 2 of 1992) which was then replaced by H Enactment 4 of 2004 wherein the latter provided:

(1) Pendaftar hendaklah memberi tiap-tiap orang yang memeriukan agama Islam olehnya telah didaftarkan suatu Perakuan Memeluk Agama Islam dalam bentuk yang ditetapkan;

I (2) Perakuan Memeluk Agama Islam hendaklah menjadi bukti muktamad tentang fakta-fakta yang dinyatakan dalam Perakuan itu.

[22] The conversion certificate stated that the applicant converted to Islam on 15 August 2002. Since this document was his own exhibit, it was argued

that the applicant was bound by it. Moreover, the applicant (or his parents) had never in the past challenged the conversion certificate and did not follow the precedent set in the case of *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545; [2018] 2 MLRA 1 where the appellant in that case had challenged the certificates of conversion issued to the children whom had been converted without their parents' consent (paras 127–128). In view of their failure to bring a judicial review action to challenge the conversion to Islam, it was submitted by the second respondent that the OS was nugatory because the exhibits before this court were concrete proof of the applicant's conversion to Islam. Based on this alone, the OS must be dismissed.

[23] In response, it was submitted by the counsel for the applicant that this suit involved a question of a legal nature with respect to the matters contained in the applicant's affidavits, whether the Syariah Laws passed by the State Assembly applied to or did not apply to him. Further, he was not and should not be bound by the jurisdiction of the Syariah courts in Perak as he was not applying for a declaration that he was 'no longer a Muslim'. Rather, the applicant asserted that he had never been a Muslim and that through the misinterpretation of the law by the respondents, he had been considered a Muslim. I herefore, it was unfair and biased to require him to submit to the jurisdiction of the Syariah courts in Perak and to be punished in accordance with Syariah Laws as such were foreign to him, since he was not a person who professed Islam and it resulted in Islam being forced upon him without his consent. The applicant also submitted that no person or authority could label him an 'apostate' or 'infidel' (unbeliever) because he had never, at any time, practiced Islam.

[24] The applicant submitted that the provisions of arts 3 and 11 of the Federal Constitution protected his rights as a non-Muslim to profess his chosen religion. Article 3 provides that '(1) Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation'. Then Article 11 provides:

> 11 Freedom of religion
>
> (1) Every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it
>
> (2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own,
>
> (3) Every religious group has the right —
>
> (a) to manage its own religious affairs;
>
> (b) to establish and maintain institutions for religious or charitable purposes; and

(c) to acquire and own property and hold and administer it in accordance with law.

(4) State law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.

(5) This Article does not authorize any act contrary to any general law relating to public order, public health or morality.

[25] Additionally, art 12(3) guarantees that no person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own. It was submitted that in *Ketua Pegawai Penguatkuasa Agama & Ors v Maqsood Ahmad & Ors and another appeal* [2021] 1 MLJ 120; [2020] 10 CLJ 748, the Court of Appeal held that 'This right to freedom of religion is sacrosanct, and distinct from other fundamental liberties for several reasons. For one, Article 11(1) unlike say Articles 9 and 10, applies to every 'person' as opposed to every 'citizen'. Further, Article 11 does not have a 'derogation clause' (using the term loosely) similar to those contained in the phrase 'save in accordance with law' common to Articles 5 and 13 ...'. And that even under international human rights, the freedom of religion is generally considered a non-derogable right.

[26] In the case of *Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181; [2021] 3 CLJ 301, the Federal Court held:

[84] Taken in this context, there is a notable difference between 'profess' on the one side and 'profess and practice' on the other. The former is a constitutional term and is justiciable before the civil courts. The latter phrase is a question of faith and dogma and therefore falls within the jurisdiction of the Syariah Courts by virtue of art 121(1A) of the FC.

[85] The dispute before us relates to the question of one's constitutional identity. It therefore necessitates constitutional interpretation of something which only the superior courts of this country have the right to address. It is only when one's faith is the main subject matter of the dispute does such dispute fall within the jurisdiction of the Syariah Courts.

[146] ... *It is for this reason that where the subject matter of a cause or matter requires a determination of whether a person is no longer a Muslim, the Syariah Court has the exclusive jurisdiction to hear and determine the said subject matter, and under cl (1A) of art 121 of the FC, the civil court has no jurisdiction in respect of the subject matter.* (Emphasis added.)

[27] It was further submitted by the applicant that the respondent's argument that this case came under the jurisdiction of the Syariah courts was misconceived (refer to encl 4, second respondent's affidavit and encl 4, first respondent's affidavit) by virtue of the provision of s 17(2)(b)(xiv) of the Enakmen Mahkamah Syariah (Perak) 2018 which referred to the original

jurisdiction of the Mahkamah Tinggi Syariah, namely, '... perisytiharan bahawa seseorang itu bukan lagi orang Islam'. According to the applicant it must be borne in mind that the action here did not involve a declaration that he was no longer a Muslim (renunciation) or apostasy. But it was arguably an ab initio case ie never a Muslim in the first place. Therefore, this matter was actually under the jurisdiction of the civil courts.

[28] Following from the above, the applicant submitted that the civil court was the right forum for him to seek the remedies as stated in the OS because he had never been a Muslim which necessitated him to file the case in the Syariah court.

[29] On this issue of professing the religion of Islam, amongst others, the applicant explained in encl 10 that regarding his name change from Lingges a/l Pannir Chelvan to Azri bin Amin (a Muslim name), the application was forced upon him as he was still a minor then and under the control of his parents. He also averred that he had to use the Muslim name because it was the name stated in his identity card. On the issue of taking Islamic Studies in school as was raised by the first respondent, the applicant asserted that getting a B+ in that subject did not mean that he practiced Islam. He also obtained good results in a few other subjects and those were irrelevant to his religious practice.

[30] Whether he had professed the religion of Islam, it was pertinent to know the meaning of 'profess' or 'professing'. The Federal Court in *Rosliza*'s case cited with approval the decision in *Azmi*'s case which discussed the meaning of these words whereby Yew Jen Kie J stated as follows:

> [96] Most pertinently, Her Ladyship continued to observe as follows:
>
> > [41] Given that the Syariah Court shall have jurisdiction only over persons professing the religion of Islam, it is therefore helpful at this juncture to ascertain the meaning of 'professing' or 'profess'.
> >
> > [42] In *Words And Phrases Judicially Defined* (1990 Ed, p 447), under the word 'profess', it is stated: 'Now what is the meaning to be attached to the word 'profess'? According to the *Shorter Oxford English Dictionary* 'profess' means 'to affirm, or declare one's faith in or allegiance to (a religion, principle, God or Saints etc)' *Re Mohamed Said Nabi, deceased* [1965] 1 MLJ 121 at p 122 per Chua J.
> >
> > [43] Longman Dictionary of Contemporary English defined 'profess' as 'a statement of your belief, opinion, or feeling'.
> >
> > [44] From the definition aforesaid, it conveys the meaning that *to profess a religion is making a public statement about the religion you believe in. Thus, a person professing the religion of Islam is a person who has made a public declaration, affirmed his faith in or his allegiance to Islam.* (Emphasis added.)

[31] Therefore, it was argued by the applicant that a person professing the religion of Islam must mean a person who had made a public declaration or affirmed his faith in Islam. Hence, the meaning of the phrase 'professing the religion of Islam' must be given an interpretation in accordance with the provisions of art 11 of the Federal Constitution so that Syariah Laws are not imposed upon persons not professing the religion of Islam.

[32] In the present case, the applicant being an eight-year old boy at the time of the conversion was said to be under the control of his parents, although he alleged that he had never pronounced the *Shahadah.* In accordance with art 11(1), the applicant has the final say to decide on his religion once he attains the age of majority. He submitted further that nowhere in the Federal Constitution provides that any Government organisation or non-Government organisation has the right to determine his religion.

[33] In support of his argument that he never professed the religion of Islam, the applicant again referred to *Azmi*'s case where it was stated that:

> [45] In my view, since the applicant, who is a Bidayuh by birth, had not in the first place professed his faith in Islam but his conversion followed that of his mother as he was a minor at the material time, logic dictates that he cannot be considered as a person professing that particular faith. That the applicant has not lived like a person professing Islam is seen in his averment that he was raised and brought up in the Bidayuh Christian community.
>
> [46] In my view, by reason that the applicant's conversion in the first place was not based on his professing Islam but by virtue of his mother's conversion and by his mother's choice for him, now that the applicant is a major, he is at liberty not only to exercise his constitutional religious right to choose his religion, he can come to this court to enforce his choice to be reflected in his identity card ie, his name and religion.

[34] Coming back to *Rosliza*'s case, the Federal Court continued:

> [98] What can be distilled from *Lina Joy* and like cases on the one side, and *Azmi* and like cases on the other, is that it is a matter of proof that the person affirmatively professed the religion of Islam at the material time. Absent of such proof, the case may be classified as an *ab initio* case.
>
> [99] Reverting to the question: do the civil courts possess jurisdiction to determine the status of persons who claim to 'never have been Muslim' as opposed to 'no longer being a Muslim'? The answer to the question must naturally be in the affirmative as otherwise there would be no legal recourse for persons of the *ab initio* category. When it concerns a renunciation case, the civil courts have consistently held that it was within the jurisdiction of the Syariah Courts conferred under art 121(1A) of the FC. For the record, learned Senior Federal Counsel appearing for the Attorney General as *amicus curiae,* agreed that it is the civil courts that have jurisdiction over persons of the 'ab initio category'.

[35] Pursuant thereto, the applicant's contention was that his case came within the purview of the civil courts as his was considered an *ab initio* case. His parents in 2008 had decided for him but as the applicant had attained the age of majority, he possessed the right to profess his religion of choice. Here, the provision of art 12(4) was cited as follows;

> (4) For the purposes of Clause (3) the religion of a person under the age of eighteen years shall be decided by his parent or guardian.

[36] The second argument by the applicant was that the conversion was null and void because it did not comply with the requirements of ss 96 and 97 of the Perak Enactment which provide:

> Seksyen 96 Kehendak-kehendak bagi pemelukan agama Islam.
>
> (1) Kehendak-kehendak yang berikut hendaklah dipatuhi bagi pemelukan sah agama Islam oleh seseorang:
>
> (a) orang itu mestilah mengucapkan dua kalimah Syahadah daiam bahsa Arab secara yang semunasabahnya jelas;
>
> (b) pada masa dia mengucap dua kalimah Syahadah itu, orang itu mestilah sedar bahawa kalimah itu bermakna 'Aku naik saksi bahawa tiada Tuhan melainkan Allh dan aku naik saksi bahawa Nabi Muhammad SAW. ialah Pesuruh Allah'; dan
>
> (c) pengucapan itu mestilah dibuat dengan kerelaam hati orang itu sendiri.
>
> Seksyen 97 Saat memeluk agama Islam.
>
> Seseorang itu memeluk agama Islam dan menjadi seorang orang Islam sebaik sahaja dia habis mengucap dua kalimah Syahadah dengan syarat bahawa kehendak-kehendak seksyen 96 dipenuhi; dan orang itu hendaklah selepas itu disebut sebagai seorang muallaf.

[37] Being mandatory requirements of the law, it was submitted that nothing in the said enactment provided for any discretion in respect of compliance with the mandatory provisions for conversion to Islam. As the applicant denied that he had ever understood or pronounced the *Shahadah* and did not convert to Islam voluntarily as a minor, his conversion and the Kad Pengislaman issued to him were not in accordance with the mandatory requirements of the law; hence the conversion was null and void. Therefore, it was submitted again that the applicant had a reasonable cause of action against the respondents in the civil courts and prayed for the declarations to be granted by this court.

[38] The court has considered the submissions and case laws cited by the parties in this interlocutory application to strike out the OS. Although the applicant placed much reliance on *Azmi*'s case, this court finds that the facts in *Hj Raimi bin Abdullah*'s case are more on point with the present case. In that

case, the plaintiff was converted as a minor together with her siblings and parents. She challenged her conversion into Islam on the grounds of, inter alia, that she was a minor when she recited the *kalimah syahadah*; as a minor, she could not understand the content, meaning and effect of her oath; she was forced to follow the directions of the officials which resulted her taking the oath. The Federal Court held that civil courts do not have the jurisdiction to hear the validity of conversion into Islam. The Federal Court said the following:

> [25] The first issue that this court needs to ask in the present case is what was the religion of the plaintiff on the date when she alleged that she had been 'wrongfully and unlawfully subjected to undergo a religious conversion process' to Islam in 1989. In our view, in determining this issue, it is necessary to first consider whether her conversion to Islam by her late father In 1983 was lawful, valid and effective. This raises the question of which court, be it the Shariah Court or the civil court shall have the jurisdiction to determine this issue.
>
> [26] Learned counsel for the defendants contended that this issue ought to be determined by the Shariah Court as it relates to the conversion of the plaintiff to Islam.
>
> [27] We are inclined to agree with the defendants as *it would be highly inappropriate for the civil court to determine the validity of the conversion of any person to the religion of Islam as this is strictly a religious issue.* As such the civil court shall have no jurisdiction by reason of art 121(1A). This view found support in the case of *Soon Singh a/l Bikar Singh*. (Emphasis added.)
>
> [28] The Court of Appeal in the present case in arriving at its decision held that the plaintiff was never a Muslim and for that reason the conversion of the plaintiff in 1989 by the defendants was unlawful. In the judgment of the Court of Appeal delivered by Mohd Hishamudin Yunus (JCA), it stated:
>
> > In our judgment, from the nature of the declaration sought, and the averments in her supporting affidavit, clearly, the plaintiff is not claiming to be a Muslim; neither is she renouncing the Islamic faith. It is not a case of the plaintiff claiming being a Muslim and now wanting to renounce her Islamic faith. *On the contrary, what the plaintiff is contending is that she was never a Muslim in the first place. She was a Hindu by birth but had been made, in an unconstitutional and unlawful manner, to renounce her Hindu faith and to embrace Islam on 28 December 1989 by the wrongful actions of the defendants.* It is her contention that the 'conversion' was unlawful and unconstitutional, and, therefore, invalid; as she was at that point of time a Hindu, a minor, and there was no parental consent for the conversion; and being of seven years of age she did not understand what the conversion process was all about. It is her contention that the alleged conversion to Islam was contrary to s 117 of the Administration of the Religion of Islam (State of Penang) Enactment 2004; contrary to s 5(1) of the Guardianship of Infants Act 1961; and there have been violations of her conslituliorial righls under arts 11(1) and 12(4) of the Federal Constitution. (Emphasis added.)
>
> [29] *It would appear that the Court of Appeal arrived at its decision on the premise that the plaintiff was of the Hindu faith and had never embraced Islam prior to 1989. The*

Court of Appeal therefore completely ignored the fact that the plaintiff had been converted to Islam together with her father in 1983, a fact which had never been challenged by the plaintiff.

[30] *We are of the considered view that the plaintiff's application in the present case could not be decided without first determining the validity of the conversion of the plaintiff in 1983, In our view, this is a matter that falls squarely within the exclusive jurisdiction of the Shariah Court.*

[31] *In the present case, the learned High Court judge had struck out the plaintiff's application on the ground that in 1989 the plaintiff was already a Muslim by virtue of the conversion in 1983. However, we are of the view that it is not for the learned judge to determine the validity of the conversion in 1983. The learned High Court judge in the present case thus had prejudged the issue of the plaintiff's conversion in 1983. We hold that the matter of conversion of the plaintiff together with her father in 1983 ought to be determined first by the Shariah Court, then only the issue of the alleged conversion in 1989 could appropriately be determined by the civil court. Hence, it is premature for the civil court to entertain the plaintiff's application at this stage.* (Emphasis added.)

[39] Based on this authority alone, this court ceases to have jurisdiction to hear the matter as the reliefs sought fell squarely within the jurisdiction of the Syariah Court under art 121(1A). The Court of Appeal in *Dahlia Daima*'s case had followed *Hj Raimi bin Abdullah*'s case when it stated (in obiter) that:

[85] The reverse in our view must as such be no less true. Even if assuming that the process of conversion is a nullity (which we found not to be the case), it does not necessarily mean that the person is not a Muslim if evidence shows that he in fact still professes the religion based on applicable legal interpretation despite any conversion which could turn out to be legally flawed.

[86] As such, similarly in the instant case, the conversion of the respondent when she was a minor at barely five, *irrespective of whether it was valid or otherwise, should not be determinative of the question of her present religious status, without examination of the entire factual matrix of the case on proof of profession,* especially when the application for declaratory relief was first filed by her in the MAIWP summons very much later in 2013 at the age of 27. (Emphasis added.)

[40] From the applicant's own affidavits it was his own evidence that he had been converted to Islam by his parents when he was eight years old together with his parents (refer to the supporting documents as outlined above). However, they claimed that as a family, they had renounced Islam after the conversion. In encls 13 and 14, his parents stated that the applicant was never involved in the conversion whereby he was merely present there. Then we have the first respondent's affidavit in encl 15 affirmed by the mubaligh Siti Kadizah @ Jitenih bt Ulasim who at the material time was the Islamic missionary who had converted the applicant and his parents. She asserted that, inter alia, that *she had witnessed the applicant reciting the Kalimah Syahadah* and the applicant had completed the form to convert into Islam and put down his thumbprint on the form. Her averments in paras 7–19 of encl 15 directly contradicted the

averments of the applicant and his parents. She also alleged that she did not convert them at the first instance in July 2002 but told them to think it through first after she had explained to them about the need to recite the *Shahadah*. She also visited them on a few occasions after the conversion to teach them about Islam. It is pertinent to note that encl 15 was never replied to by the applicant. It is trite law that the evaluation of affidavit evidence that where one party makes a positive assertion upon a material issue, the failure of his opponent to contradict is usually treated as an admission by him of the fact so asserted: *Ng Hee Thoong & Anor v Public Bank Bhd* [1995] 1 MLJ 281; [1995] 1 CLJ 609.

[41] It was submitted from the Bar that there was insufficient time to reply and no direction from the court. The court could not accept this feeble reason because this was a material issue in the determination of whether there was a reasonable cause of action before the court. An adjournment would have been given had one been sought. On 16 February 2023, there was a case management session before the Deputy Registrar and the applicant had objected to the first respondent's application for extension of time to file a reply to encls 11 and 12 because it involved an independent witness. The basis of the objection by the applicant was that encls 11 and 12 were filed and served via email on 19 January 2023. The first respondent informed that they received the hardcopy only on 3 February 2023 and there was no email received as claimed by the solicitors for the applicant. The Deputy Registrar proceeded on 16 February 2023 to fix the hearing date for encls 3 and 7 on 16 March 2023. It is noted that encl 15 was filed on 24 February 2023 and served upon the applicant on 27 February 2023. There was ample time of slightly more than two weeks for the applicant's solicitors to write in and seek an adjournment to file a reply since this was only an interlocutory application.

[42] Moreover, there were also contradictory evidence in regard to their assertion that they were non-Muslims; the court finds that there was a Statutory Declaration signed on 18 February 2009 by his mother in support of the application to JPN on 23 February 2009 to amend his name from Lingges a/l Pannir Chelvan to his Muslim name Azri bin Amin (exh SNS2 of encl 4). It was stated that she sincerely had left her original religion and there was no coercion by anyone in that regard. This fact could not be disputed by the applicant and his parents. The other exhibits to support their claim were in the form of photographs to show that they as a family celebrated Hindu festivals and a man praying at an altar (exh AA4 of encl 2). However, the court views that these photographs did not depict their purported practice of Hinduism within the few years after they claimed to have renounced Islam (after allegedly regretting the conversion). There were also no childhood photographs of the applicant showing his lifestyle or practicing Hinduism despite this being an issue which even at the material time they claimed to be an important one that would affect his constitutional rights to profess his religion of choice.

[43] It is reasonable to draw an inference that since the parents were taught the ways of Islam by the missionary, the family, at some point in time had practised Islam but reverted to Hinduism (if it was true that they reverted) as opposed to the version that was stated by the applicant that the parents reverted to Hinduism almost immediately. There was also evidence in the forms regarding the conversion that the parents' consent were obtained, and this did not run counter to the provision in the Federal Constitution (art 12(4)).

[44] The court also noted from the first respondent's exhibit (encl 15) that the applicant had filed the case earlier in the Syariah Court and somehow did not proceed with it. The applicant did not mention this fact it in his pleadings. The court could speculate that if he went on with it, he might have been ordered to go for counselling as this was the case of *Dahlia Daima.* But as there was no such evidence from the appellant, the court opined that he should have pursued it in the Syariah Court to finally determine the status of his conversion rather than in the civil courts. *Pursuant thereto, the court could not find in favour of the applicant that the evidence adduced would support his contention that this was not a proper case to be struck out for want of a reasonable cause of action and/or an abuse of the Court process.*

[45] Having said that, additionally in *Azmi*'s case, the applicant there did not seek to challenge his conversion into Islam. Rather, he sought to enforce his rights under the constitution to choose his religion after attaining the age of majority and the consequential declarations. Therefore, that case was distinguishable on the grounds that the conversion was not challenged. The learned High Court judge also referred to *Hj Raimi bin Abdullah*'s case noting that it was necessary to first consider whether her conversion to Islam by her late father in 1983 was lawful, valid and effective. It was thus clear that the Federal Court's decision was one on jurisdictional issue. Whereas *Azmi*'s case was one in which 'Having become a major, the applicant had, in exercising his right of freedom of religion, decided on Christianity as a religion of his choice and he is coming to court to seek a declaration that he is a Christian. This raises the constitutional issue as opposed to jurisdiction issue'.

[46] The Court must be very careful with the factual matrix of the case. It appears that the applicant is seeking to renounce the Islamic faith although he claimed that this is an *ab initio* case. *Dahlia Daima*'s case (paras 95–97) applied the same principle (see also para 136 and compare with paras 23 onwards in encl 2). Having perused the affidavits and evidence therein, therefore, applying the principle in *Hj Raimi bin Abdullah*'s case to the present case, *this court does not have jurisdiction to hear the matter as it falls squarely within the jurisdiction of the Syariah court to determine the validity of the conversion first.*

[47] In the case of *Tan Kim Hor & Ors v Tan Heng Chew & Ors* [2003] 1 MLJ

492 the court stated:

> One other point that is quite disturbing is the purported conclusions or findings that must have been derived from the materials before the learned judge. Obviously, she must have evaluated the several affidavits filed. But that approach would then be tantamount to conducting a trial by affidavits which should not be the case. Indeed, 'in the normal way it is not appropriate for a judge to attempt to resolve conflicts of evidence on affidavit' (see *Eng Mee Yong & Ors v Letchumanan* [1979] 2 MLJ 212). *But having said the foregoing, we are well aware that it is allowable even at an interlocutory stage for the court to examine affidavit evidence and to come to certain finding where 'such assertion, denial or dispute is equivocal, or lacking in precision or is inconsistent with undisputed contemporary documents or other statements by the same deponent, or is inherently improbable in itself, then the judge has a duty to reject such assertion or denial, thereby rendering the issue not triable'* (per Mohd Azmi SCJ at p 408 in *Bank Negara Malaysia v Mohd Ismail & Ors* [1992] 1 MLJ 400). (Emphasis added.)

[48] Applying the abovementioned principle, while the court in deciding on the issue of a reasonable cause of action (ground (a)) should not go into the affidavit evidence, however, there is a need to do so because the question is directly relevant to the contents of the affidavits. For completeness, the court has also considered the other cases referred to by the parties but not discussed specifically in this grounds of judgment as those cases can be distinguished on the facts.

[49] In regard to the other issue of the first respondent not being a proper person to be named in this suit, it was their case that the *Majlis Agama Islam dan Adat Melayu Perak* was a body corporate which can sue and be sued as provided for under s 5(1) dan (2) of the same Enactment 4 of 2004. Filing a claim against an individual and not the council itself, the applicant was clearly misconceived in law.

[50] The applicant responded that the designation was named in its capacity as the *Ketua Pegawai Eksekutif Majlis Agama Islam dan Adat Melayu Perak* and not in a personal capacity. It was averred by the applicant in encl 12 that the *Majlis Agama Islam dan Adat Melayu Perak* was the body responsible for all matters pertaining to the religion of Islam in the state of Perak. Therefore, the first respondent as the *Ketua Pegawai Eksekutif* was responsible for all actions carried out by the *Majlis Agama Islam dan Adat Melayu Perak*. The court finds that this is a non-issue as the civil courts does not have jurisdiction to hear the case.

[51] The court has addressed all the issues as outlined in para 4 of the grounds of judgment. One last issue which should be mentioned here was whether this was a proper case to be heard by way of a writ action rather than an OS (O 28 r 8(1) of the ROC). The court has considered this question too in

determining if there was a reasonable cause of action (ground (a) of O 18 r 19). It is decided that it is also unnecessary to delve into it because the court finds that there is no reasonable cause of action whereby the court does not have jurisdiction to hear the OS as the issue of the conversion must be challenged in and be determined by the Syariah Court.

CONCLUSION

[52] It is only in plain and obvious cases that recourse should be had to the summary process of striking out an action or pleading. It is this court's finding that upon perusal of the affidavits, it is obvious that the action is unsustainable at the civil courts as the applicant is challenging the conversion in 2002, a question which is purely for the Syariah courts to determine.

[53] Premised on the above considerations, the court finds that the respondents has proved, on a balance of probabilities, that there is no reasonable cause of action in the OS. Accordingly, the court allows both applications in encls 3 and 7 to strike out the OS with costs.

Order accordingly.

Appliactions to strike out OS allowed with costs.

Reported by Nabilah Syahida Abdullah Salleh